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FILED  
DISTRICT COURT  
2007 JUL 16 PM 3:26  
WASHINGTON COUNTY

*Scanned 30 Oct 07  
Remains sealed  
until hearing of 6 Nov 07  
30 Oct 07*

**IN THE FIFTH DISTRICT COURT  
WASHINGTON COUNTY, STATE OF UTAH**

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

**DEFENDANT'S OPPOSITION  
TO STATE'S MOTION TO  
ADMIT DEFENDANT'S  
STATEMENTS**

**[Filed under Seal]**

**Case No. 061500526**

**Judge James L. Shumate**

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Defendant WARREN STEED JEFFS opposes the state's "Motion in Limine Regarding Statements of the Defendant." In opposing said motion, the defendant incorporates by reference the arguments set forth in his "Motion In Limine as to Recorded Jailhouse Statements,"

previously filed on July 9, 2007. In further opposition to the State's motion to admit certain jailhouse statements, the defendant adds the following points and authorities.

### **Lack of Relevancy**

The State moves to admit the defendant's jailhouse statements about the Lord revealing to him that, due to immoral conduct with a sister and daughter 31 years ago, he never held the position of Prophet in the FLDS. The State apparently contends that these statements are admissible to show that the defendant's control over Elissa Wall and Alan Steed was motivated by a secular desire for power rather than religious dogma. Furthermore, the State apparently argues that the statements are relevant to his state of mind because the jury may infer that the defendant is seeking forgiveness for his "manipulation of the victim in this case." State's Motion in Limine, pp 5-6.

The logic of the State's proffer of relevancy is not readily ascertainable. The spiritual turmoil that the defendant expressed over a vaguely described immorality occurring 31 years ago has no bearing on the alleged offenses. It is unclear how the defendant's recent statements show that he acted with a secular purpose when performing the marriage ceremony and subsequently providing counseling. Moreover, whether he was motivated by a secular purpose, religious purpose, or some other purpose has no bearing on the alleged offense. The point is that, at all time relevant to the alleged offenses, the defendant and FLDS membership, including Elissa Wall, perceived the defendant as the spiritual leader of the FLDS.

### **Rule 403 Factors**

As previously briefed by the defendant, this Court must weigh various factors when undertaking the Rule 403 analysis, including: (1) the strength of the evidence of the prior bad act;

(2) the similarity of the prior act to the charged offense; (3) the remoteness in time between the prior act and charged offense; (4) the necessity for the proffered evidence; (5) the likelihood that the prior bad act evidence will confuse the issues or mislead the jury; (6) the degree to which the evidence will invoke an emotional and hostile response by the jurors; and (7) whether the presentation of the evidence will cause undue delay or waste of time. State v. Allen, 108 P.3d 730, 736 (UT App. 2005). The State only addresses the sixth factor, arguing that the defendant's statements are not emotionally inflammatory or horrific. It wholly ignores the other factors and the context in which the defendant made the statements.

It bears repeating that the admission of a snippet of the many conversations tape-recorded between the defendant and his family and followers will confuse and mislead the jurors. To place the statements in an accurate context, numerous tape-recordings will need to be introduced and analyzed. The jury will be called upon to make inferences drawn from religious beliefs expressed by the defendant and others in the tape recordings. Additionally, the jury will need to consider evidence of the defendant's medical condition at the time the statements were made.

By way of example, the State claims in its motion that the defendant never renounced or disavowed his statements. However, reading the transcripts of the jailhouse recordings, as a whole, shows that the defendant vacillated on whether he holds the prophecy due to the undefined immorality occurring 31 years ago. His vacillation appears to coincide with the fluctuations in his medical condition. Towards the end of January 2007, when his health was poor, he related that he has not held the priesthood since he was 20 years old because of the undefined immorality. In the video-taped visit with his brother, the defendant stated that this was a revelation from the Lord and disagreed that it was merely test.

In subsequent conversations, however, the defendant concluded that he did experience a great test. For instance, on February 10, 2007, the defendant made a series of telephone calls in which he explained to the listeners that he was tested but remained committed to the priesthood. In one of these conversations, he related, "It's been a whole week of attack beyond what you can imagine. Finally, this morning I showed the Lord that I was for him and I wasn't going to give in, so be assured I'm for God and the priesthood. . . . Though I said what I said, and felt unworthy of it all, I did not deny God and priesthood, I uphold them." Telephone call, 2/10/07 at 7:10 p.m. Significantly, the defendant engaged in several conversations in which he continued to act as the Prophet of the FLDS, praying with the members, taking their testimonies, and giving spiritual instructions.

No doubt, the State would attempt to point to other phrases which may be interpreted to signify that the defendant again doubted his role as Prophet. And, in response, the defendant could point to other conversations showing a confirmation of his faith and priesthood. The contest over the relevancy and meaning of the defendant's statements would require an inordinate amount of trial preparation and court time. And, for what purpose? To show that the defendant made a vague admission to an undefined immorality occurring 31 years ago? To permit the jury to contemplate the differences between revelation and testing or determine whether the defendant holds the keys to priesthood at a given time? To encourage the jury to speculate on the significance of the defendant's spiritual experiences while he is in poor health and detained in social isolation? These are the issues which the State's proposed evidence would unnecessarily inject into the trial.

In conclusion, the State has not established that the proffered tape-recordings have any

probative value to the alleged offenses. The statements concern a reference to a vague, undefined immorality remote in time with no relevance to the instant case. Even if the Court found that the statements had some relevancy, the above Rule 403 factors substantially weigh against the admission of the statements. Given the irrelevancy of the jailhouse statements to the instant charges, their admission would only serve to waste time and confuse and mislead the jury, as well as further sensationalize the case in the eyes of the public.<sup>1</sup>

For these reasons and those set forth in the defendant's previous motion in limine, the State's motion to admit the recorded jailhouse conversations should be denied.

DATED 16<sup>th</sup> day of July 2007.

Respectfully Submitted,



Walter F. Bugden, Jr.

BUGDEN & ISAACSON, L.L.C.

Richard A. Wright

WRIGHT, JUDD & WINCKLER

Attorneys for Defendant Jeffs

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<sup>1</sup> In brief response to the media-intervenors' argument that the public is entitled to know the contents of the motions in limine regarding the jailhouse statements, the defendant once again urges the Court to protect his right to privacy and absolute right to a fair trial over the media-intervenors' qualified right to access. The proffered evidence is inadmissible and unfairly prejudicial. To have the press further sensationalize the case by disseminating inadmissible evidence at this juncture in the prosecution infringes on the defendant's constitutionally protected rights to privacy and fair trial. The media-intervenors perceive voir dire as the perfect cure-all against pretrial publicity. It is not. This Court has more effective tools to protect the defendant's constitutional rights. It has the authority to seal the motions, redact the motions, or delay disclosure.

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 16th day of July, 2007, I caused to be served a true and correct copy of the foregoing Defendant's Opposition to State's Motion to Admit Defendant's

Statements by the method indicated below, and addressed to the following:

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